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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

BNSF RAILWAY COMPANY, <p style="text-align: center;">Petitioner</p> v. YAKIMA COUNTY, <p style="text-align: center;">Respondent</p> YAKAMA NATION, <p style="text-align: center;">Intervenor.</p>	DOCKET NO.: TR-140382 AND DOCKET NO.: TR-140383 PREFILED REBUTTAL TESTIMONY OF AL PINKHAM
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SUMMARY

Alvin A. Pinkham, Jr. ("Al Pinkham" or "Mr. Pinkham") is the Engineering Planner II for the Yakama Nation Engineering Program. His rebuttal testimony offered here—based on his engineering and roads-related education, accumulated knowledge, and professional experience—provides testimony evidence regarding the filed testimony of Petitioner’s witness, Gary Norris.

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TESTIMONY

Q: Please state your name and current position of employment.

A: My name is Alvin A. Pinkham, Jr. I am the Engineering Planner II for the Yakama Nation Engineering Program.

Q: Can you please describe your position?

A: I am in charge of the Yakama Nation's transportation planning, which includes planning for the tribal transportation system on the Yakama Reservation. I prepare and assist with documentation and reports as required by the Yakama Nation's Program Agreement with BIA, to include road right-of-way acquisition and environmental compliance as required by the National Environmental Policy Act (NEPA). Also as the planner I work with and coordinate road projects with the other transportation agencies on the reservation.

Q: When did you assume your current position?

A: In November 2010.

Q: What did you do before 2010?

A: I worked for the Bureau of Indian Affairs for about 32 years in the Yakama Agency BIA Branch of Roads.

Q: Are you retired as a federal civil employee?

A: Yes.

Q: Will you please describe the position you held at the time of your retirement with the BIA?

A: I was a Supervisory Civil Engineering Technician, Acting Branch Manager. I was responsible for the reservation road system. Basically, I worked to ensure that the reservation

1 roads needing improvement were addressed, and I worked in planning, right-of-way acquisition,
2 environmental review, and construction contracting.

3
4 Q: Can you describe your education background?

5 A: I studied at Washington State University and Yakima Valley Community College and
6 received an Associate's Degree as a Civil Engineering Technician from Yakima Valley
7 Community College. I've also trained with the BIA on soil testing, right-of-way acquisition,
8 land surveying, NEPA compliance, P.L. 93-638 contracting and CAD design.

9 Q: How long have you worked on the Yakama Reservation?

10 A: I've worked in and around the Yakama Reservation for 37 years.

11
12 Q: How would you describe your knowledge of the Yakama Reservation road system?

13 A: Because of my work, I have professional knowledge about the transportation and road
14 system on the Yakama Reservation, and I have 37 years of experience working with the system,
15 addressing engineering-related issues, traffic issues, and other matters that are required to
16 manage transportation on the Yakama Reservation from an engineering perspective.

17 Q: Did you review the Prefiled Testimony of Gary Norris in this matter, offered by
18 Petitioner BNSF?

19 A: Yes I did.

20
21 Q: Did any of Mr. Norris's testimony cause you to change the positions offered in your
22 original prefiled testimony?

23 A: No.

24 Q: Why not?

25 A: I did not find his opinions convincing or supported by facts.

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Q: In your review of Mr. Norris’s testimony, did you form any opinions about the information, opinions, and other testimony he offered?

A: Yes.

Q: Will you please explain the opinions you have regarding Mr. Norris’s testimony?

A: The first thing that struck me reading Mr. Norris’s testimony was that he claims to have considered Yakama Nation tribal activities and the impacts BNSF’s proposed railroad crossing closures would have on Yakama and other tribal activities in and around the area of these proposed closures. Mr. Norris does not elaborate as to how he considered the tribal activities or what basis he has to offer testimony that he knows what the tribal activities are that might be impacted by the closures. Had Mr. Norris reached out directly to the Yakama Nation and its tribal government, I am confident that I would have been notified given that these matters fall within my area of concern in the Yakama Nation Engineering Program. I was not notified that Mr. Norris had inquired with the Yakama Nation regarding tribal activities in the areas that will be impacted by the proposed closures. In any event, Mr. Norris does not provide any details about the tribal activities that he considered that will or will not be impacted by these proposed closures, or how he knows about these tribal activities, even though he ultimately and later offers an opinion, for example, that these closures will not significantly impact access to the Satus Longhouse, where members of the Yakama Nation and other tribal members gather for worship, funerals, and other cultural and religious events and services. In my opinion, based on my long history of working closely with and for the Yakama Nation and its membership, the closure of especially the Barnhart Road crossing, will negatively impact tribal activities in this area.

Q. In what way?

A. As I testified before, there is a nearby cemetery that members of the Satus Longhouse and other community members use for funeral services, and they almost always travel between the Satus Longhouse and that cemetery. I understand that the Barnhart Road crossing provides a

1 traditional route between the Satus Longhouse and the cemetery. This, along with general access
2 to and from the Satus Longhouse, are the most common tribal activities I know of in this area.
3 Generally, there are many cars using the most direct route between the Satus Longhouse and the
4 cemetery during funeral services. It is logical that the long funeral processions traveling between
5 the Satus Longhouse and the cemetery on their traditional funerary route would need to use
6 longer and more circuitous routes for funeral services, and the longer funeral processions would
7 need to therefore spend more time traveling on alternative routes. This would consequentially
8 further interrupt the normal course of traffic along State Route 22, and increase the risk of
9 collisions because of the re-routing of tribal activities caused by the closure of the Barnhart Road
10 crossing.

11 Q. Can you please explain any other opinions regarding Mr. Norris's testimony you might
12 have?

13 A. Sure. Mr. Norris raises historical issues about the ability for cars to stop versus the
14 ability for horse-drawn carriages and slower moving trains to stop. He argues that based on his
15 assumption that horse-drawn carriages can allegedly stop more quickly than motor vehicles, and
16 train speeds are considerably higher now than when these at-grade crossings were first used, that
17 the crossings have become unsafe. But Mr. Norris does not appear to account for the fact that
18 the two at-grade railroad crossings at issue here both have stop signs for motor vehicles from
19 both approaching sides of the crossings. You can see these stop signs in Exhibit 7 to my direct
20 prefiled testimony and in my Exhibit 1 to this rebuttal testimony. The former exhibit shows the
21 stop signs approaching the North Stevens Road railroad crossing from both sides. The latter
22 exhibit shows the stop signs at the Barnhart Road crossing.

23 In my opinion, a motor vehicle moving from a stopped position or a slower rate of speed
24 would be able to stop at least as quickly as, if not more quickly, than a horse-drawn carriage.
25 But in any event, the lack of accounting for the stop signs and the fact that the motor vehicles
that stop as a result of the stop signs render Mr. Norris's points about the higher speeds of both
motor vehicles and trains moot. In my opinion, given the lack of history of collisions between

1 motor vehicles and trains at these crossings, it is not accurate to conclude that these crossings are
2 generally unsafe, and the rate of speeds and technology of vehicles, combined with the presence
3 of stop signs, if anything, make these crossings safer than they might have been in the past.
4

5 Q. Did anything else strike you about Mr. Norris's testimony?

6 A. Yes, Mr. Norris gives measurements that he uses for his testimony, but I'm not sure how
7 he arrived at his conclusions on these measurements. For example, at page 5, Mr. Norris
8 says that the Barnhart Road crossing is about 200 feet north of State Route 22. According to my
9 calculations, from the centerline of State Route 22 to centerline of the railroad at the Barnhart
10 Road railroad crossing is 164 feet, and from the stop bar of the State Route 22 and Barnhart
11 Road intersection to the crossing is about 132 feet. Mr. Norris's calculations are a little closer to
12 mine in my centerline-to-centerline measurement of the North Stevens Road crossing. I get 154
13 feet between the centerline of South Track Road and the centerline of the railroad at the crossing
14 at North Stevens Road, and I get 120 feet between the stop bar at South Track Road and the
15 North Stevens Road railroad crossing. I found this discrepancy interesting because I'm not sure
16 how Mr. Norris measured these distances and came to different conclusions, especially the
17 significant differences regarding the Barnhart Road crossing and its proximity to State Route 22.

18 Q. What other opinions do you have about Mr. Norris's testimony or the conclusion he
19 draws?

20 A. At page 6 of his testimony, Mr. Norris references traffic volume data and provides a
21 description of how he arrived at that data. But Mr. Norris does not mention the time of year
22 during which he collected his traffic data. In the areas of these crossings, if he collected his data
23 during the winter the data is going to reflect significantly lower traffic volume than would be
24 observed during the summer months. When we collect this sort of data, we always note the time
25 of year and then apply a seasonal factor in our assessments to obtain an "annual average."
Accordingly, Mr. Norris's testimony is unclear as to whether or not his data is an accurate

1 reflection of the traffic, and whether the opinions he forms based on his data are therefore based
2 on accurate information.

3
4 Q. Do you have any other opinions on Mr. Norris's testimony?

5 A. Yes, on page 7 of Mr. Norris's testimony he discusses the impacts of the rerouting of
6 traffic that closing the two railroad crossings at issue here would cause. Although he discusses
7 the capacity of the surrounding network of roads, Mr. Norris does not adequately account for the
8 more significant traffic at other crossings, and how this would impact the safety of people
9 utilizing those crossings along with the safety of other people traveling along the highways and
10 roads that the re-routed vehicles must use. Logic dictates that people crossing the railroad tracks
11 at Barnhart Road or North Stevens Road are almost always going to need to cross elsewhere if
12 the Barnhart Road or North Stevens Road crossings are not available to them. Therefore, closing
13 these crossings will require longer travel periods, which necessarily increase the risk of vehicle
14 collisions during the course of those longer travel periods. The shift of traffic and the longer
15 travel periods required should be completely accounted for if a complete assessment of the
16 closures BNSF proposes here is to be made. My opinion—based on my review of the
17 information available in this matter, my education, and experience—is that any reduction in the
18 accident rate resulting from the closure of the two railroad crossings at issue here would cause at
19 least a proportional increase in the accident rate at other railroad crossings—and a probable
20 increase in the accident rate on the network of roads that travelers must use to navigate to and
21 from alternate railroad crossings—thereby negating any benefit of closing the two railroad
22 crossings that BNSF seeks to close.

21 Q. What else, if anything, did you find relevant about Mr. Norris's testimony in terms of
22 your analysis in this matter and your opinions?

23 A. On page 9 of Mr. Norris's testimony he discusses the general concerns raised in
24 comments responding to the proposed railroad crossing closures at Barnhart Road and North
25 Stevens Road. But Mr. Norris does not discuss emergency response times. He does, however,

1 dismiss any concerns about emergency response times being impacted by the closures of these
2 crossings at page 11, where he cites to information apparently obtained from Yakima County
3 Public Services Department for the assertion that there “have been no documented uses of either
4 the North Stevens Road or Barnhart Road railway crossings for emergency fire or medical
5 response during the last five years.” What is missing from this testimony, in my opinion, is
6 whether fire or medical first responders, or even law enforcement, document the use of these
7 crossings each and every time they use such crossings. In other words, there may be no
8 “documented uses” of these crossings because the first responders do not generally document
9 their use of railroad crossings when conducting emergency responses. Even if the emergency
10 responder agencies servicing these areas do document every single time they use a railway
11 crossing, the lack of documentation over the last five years does not support Mr. Norris’s
12 conclusion that emergency response “will not be adversely affected by the closure of the two
13 crossings.” In fact, it seems inconsistent to argue—as Mr. Norris does—that these crossings are
14 dangerous despite the fact that there have been no recent accidents at either of the two crossings
15 proposed for closure here in the past several years because there could be a potential for
16 accidents to occur in the future, but to entirely discount the adverse impacts to emergency
17 responders that the closure of these two crossings would have because of a purported lack of use
18 of these crossings by emergency responders in the past five years. Put another way, I fully
19 acknowledge that the lack of accidents at either of these crossings does not mean that there will
20 be no accidents at these crossings in the future. My contention, rather, is that the traffic at these
21 crossings will be shifted to other crossings, increasing the risk of accidents at those other
22 crossings. In the same way, the alleged lack of emergency responders using these two crossings,
23 if true, does not support the opinion that the community will not suffer slower response times by
24 emergency responders in the future if BNSF is permitted to close the railroad crossings at
25 Barnhart Road and North Stevens Road.

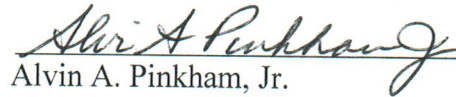
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2 I, Alvin A. Pinkham, Jr., declare under penalty of perjury under the laws of the State of
3 Washington that the foregoing PREFILED REBUTTAL TESTIMONY OF AL PINKHAM is
4 true and correct to the best of my knowledge and belief.

5 Signed at Toppenish, Washington, this 12th day of March, 2015.

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8 
9 Alvin A. Pinkham, Jr.

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11 DATED this 12th day of March, 2015

12 Galanda Broadman, PLLC

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16 R. Joseph Sexton, WSBA #38063
17 Galanda Broadman PLLC
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CERTIFICATE OF SERVICE

I, R. Joseph Sexton, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen years, not a party to the above-entitled matter, and competent to testify as a witness.

2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35th Ave. NE, Suite L1, Seattle, WA 98115.

3. I submitted the foregoing document for filing with the Washington Utilities and Transportation Commission via United States Postal Service or a courier service for hand delivery to Steven King, Executive Director and Secretary of the Washington Utilities and Transportation Commission, and through the Commission's Web Portal. I also submitted an electronic PDF version as well as hard copies via United States Postal Service to the following parties and representatives:

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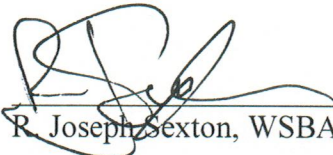
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The foregoing statement is made under penalty of perjury and under the laws of the State of Washington and is true and correct.

Signed at Yakima, Washington, this 12th day of March, 2015.


R. Joseph Sexton, WSBA #38063